Common Law Division
Supreme Court
New South Wales

Case Name:	**Adams v Commissioner of Police, New South Wales Police Force**
Medium Neutral Citation:	[2025] NSWSC 1181
Hearing Date(s):	01 October 2025
Date of Orders:	09 October 2025
Date of Decision:	09 October 2025
Jurisdiction:	Common Law
Before:	Griffiths AJ
Decision:	1. The amended summons is dismissed. 2. There be no order as to costs. 3. The Respondent has leave to contact the Associate to Griffiths AJ to arrange the return of the sealed envelope containing the unredacted COPS Report.
Catchwords:	ADMINISTRATIVE LAW — judicial review of Appeal Panel decision — whether to conduct judicial review where an alternative remedy is available — construction of cl 1(d) of s 14 of the Government Information (Public Access) Act 2009 (NSW) — whether to inspect unredacted police report — no order as to costs
Legislation Cited:	*Civil and Administrative Tribunal Act 2013* (NSW), ss 34, 83 *Court Suppression and Non-publication Orders Act 2010* (NSW) *Government Information (Public Access) Act 2009* (NSW), ss 3, 5, 9, 12, 13, 14, 15, 55, 72, 73, 74 *Security Industry Act 1997* (NSW), s 29
Cases Cited:	*Adams v Commissioner of Police, NSW Police Force* [2024] NSWCATAD 243 *Adams v Commissioner of Police, NSW Police Force* [2025] NSWCATAP 58

	BDS17 v Minister for Immigration and Border Protection [2018] FCA 1683 *Commissioner of Police New South Wales v Gray* (2009) 75 NSWLR 1; [2009] NSWCA 49 *COZ16 v Minister for Immigration and Border Protection* (2018) 259 FCR 1; [2018] FCA 46 *DRJ v Commissioner of Victims Rights* [2020] NSWCA 136 *Fong BHNF Fong v Weller* [2024] NSWCA 46 *Gedeon v Commissioner of the New South Wales Crime Commission* (2008) 236 CLR 120; [2008] HCA 43 *Hawkins v Wimbledon 1963 Pty Ltd* [2024] NSWSC 1465 *HT v The Queen* (2019) 269 CLR 403; [2018] HCA 40 *Oshlack v Richmond River Council* (1998) 193 CLR 72; [1998] HCA 11 *R v Connell; Ex parte Hetton Bellbird Collieries Ltd* (1944) 69 CLR 407; [1944] HCA 42 *Shapkin v The University of Sydney* [2024] NSWCA 156
Texts Cited:	Nil
Category:	Principal judgment
Parties:	Charlie Armstrong Adams (Plaintiff) Commissioner of Police, NSW Police Force (Defendant)
Representation:	Counsel: Self-represented (Plaintiff) C Langford (Defendant) Solicitors: McCullough Robertson (Defendant)
File Number(s):	2025/00143980
Publication Restriction:	Nil

Decision under appeal

Court or Tribunal:	NSW Civil and Administrative Tribunal
Jurisdiction:	Appeal Panel
Medium Neutral Citation:	[2025] NSWCATAP 58

Date of Decision:	21 March 2025
Before:	P Durack SC, Senior Member N Kennedy, Senior Member
File Number(s):	2024/00324512

JUDGMENT

1 By an amended summons filed 23 June 2025, Mr Adams seeks judicial review of a decision dated 21 March 2025 of an Appeal Panel of the NSW Civil and Administrative Tribunal (**NCAT**) (see *Adams v Commissioner of Police, NSW Police Force* [2025] NSWCATAP 58 (***Adams (No 2)***).

2 The Appeal Panel dismissed both an application for leave to appeal and an appeal from a decision by the Tribunal exercising NCAT's administrative review jurisdiction (see *Adams v Commissioner of Police, NSW Police Force* [2024] NSWCATAD 243 (***Adams (No 1)***)). The Tribunal had affirmed a decision by the Commissioner (after an internal review) under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) relating to Mr Adams' application for access under that legislation to a three-page police report (**COPS Report**). The Commissioner had granted access to large parts of the COPS Report, but there were several redactions which Mr Adams did not accept. The COPS Report relates to a police attendance at an internet café in Sydney on 27 June 2023 in response to a report by Mr Adams that he had discovered a security camera in the male bathroom at the café.

3 In brief, the primary issues for determination are whether Mr Adams (who represented himself) has established that the Appeal Panel committed one or more jurisdictional errors or errors of law on the face of the record. As will emerge, he alleges there are multiple such errors, including the failure to determine what he asserts to be a "jurisdictional fact" (namely that the identity of the café owner should not have been redacted because the owner was not a bona fide confidential informant acting in good faith but was rather an alleged wrongdoer). This raises an issue of statutory construction concerning cl 1(d) of the Table in s 14 of the GIPA Act.

4 Mr Adams also claims that the Appeal Panel failed to consider whether parts of the COPS Report could have been redacted to exclude identifying features and give greater disclosure in accordance with s 72(1) of the GIPA Act. He says that the Appeal Panel failed to consider remitting the matter to determine a

factual issue raised by Senior Member Durack SC during the hearing that the redacted material might include material not covered by cl 1(d).

5 Other alleged errors raised by Mr Adams in either the amended summons or his written submission filed 5 September 2025 include procedural unfairness, inadequate reasons and the illogicality of redacting the location of the café in circumstances where Mr Adams already knew the business name and address.

6 A question has also arisen whether or not the Court should itself examine an unredacted copy of the COPS Report as did both the Tribunal and Appeal Panel.

7 There is a further issue regarding whether the Court should in its discretion refuse to conduct a judicial review having regard to the Court's statutory discretion in s 34(1)(c) of the *Civil and Administrative Tribunal Act 2013* (NSW) (**CAT Act**). This issue was raised by the Commissioner shortly before the hearing in its outline of submissions dated 17 September 2025. It is convenient to address that issue before turning to the substance of the amended summons. First, however, I shall provide some more background facts which provide further context.

Some further background facts

8 As noted above, on 17 December 2023 Mr Adams lodged an application for access under the GIPA Act. He sought access to a copy of the "full police report" relating to the camera he found in the toilet on 27 June 2023 and reported to the police. The Commissioner's record of Mr Adams' access application describes its stated purpose as "CIVIL LITIGATION".

9 On 3 October 2023, the Commissioner notified Mr Adams that he would be given access to a copy of the COPS Report except for certain redactions. A copy of the redacted document was provided to him at that time.

10 On 15 October 2023, Mr Adams sought an internal review of the Commissioner's decision. In his application for internal review, Mr Adams

described himself as the person who reported the incident, and said that, as such, he had a legitimate interest in obtaining information relating to the incident and any actions or investigations. He also said that he intended to take legal action against the café for personal injury stemming from the incident. He said that access to all relevant information, including the owner's explanation and name, is "crucial for building and supporting my case". He described the information as being essential for his civil proceedings.

11 On 3 November 2023, Mr Adams was informed of the outcome of the internal review decision, which was conducted by a delegate of the Commissioner. The delegate provided reasons why certain redactions had been made, relying on one or more of the provisions in cll 1(d), 3(a), 3(b) and 4(d) in the Table in s 14. Under the section in the reasons headed "Balancing the public interest considerations", the internal reviewer stated that she had considered Mr Adams' "personal factors and reasons for which you are seeking access to the requested information" but said that, in her view, the factors were not so significant as to influence the public interest and the overriding interest against disclosure of the information. The internal reviewer added that she acknowledged that Mr Adams might still want to pursue civil litigation in a personal injury claim and that he would have the opportunity to subpoena requested information under Court processes.

12 The version of the COPS Report provided to Mr Adams following the internal review differed in some respects from the version he received after the Commissioner's primary decision at first instance. For example, the exemptions relied upon for the redactions were not all the same and more pro forma details were disclosed (while still not releasing the location of the café or personal details concerning the owner and the information that the owner provided to police). Fewer redactions were also made to the fourth paragraph on the second page of the COPS Report.

13 Although a copy of the unredacted document was understandably not included in the Court Book prepared by the Commissioner, Ms Langford (who appeared for the Commissioner before me) submitted that there was no objection by the

Commissioner to me viewing the document if I thought it necessary to do. Mr Adams urged me to look at the unredacted document.

14 The parties took advantage of an opportunity to provide brief supplementary submissions in writing after the hearing on the question whether the Court should itself review the unredacted document. I will return to discuss that matter below. First, I will address the Court's discretion to not conduct a judicial review in a case such as this.

Should the Court refuse to conduct the judicial review?

15 It is well established that the Court has a discretion to refuse relief in a judicial review proceeding where the Court considers there is available an adequate alternative remedy (see, for example, *Fong BHNF Fong v Weller* [2024] NSWCA 46 at [29] per Kirk JA).

16 In addition, s 34(1)(c) of the CAT Act confers a specific discretion on the Court to refuse to conduct such a review in the specified circumstances:

> **34 Inter-relationship between Tribunal and Supreme Court**
>
> (1) The Supreme Court may—
>
> …
>
> (c) refuse to conduct a judicial review of a decision of the Tribunal if an internal appeal or an appeal to a court could be, or has been, lodged against the decision.
>
> …

17 Mr Adams has a statutory right of appeal to this Court on a question of law, but only with the leave of the Court (see s 83(1) of the CAT Act). In effect, Mr Adams has avoided the requirement of leave by commencing a judicial review challenge.

18 The Court's discretion under s 34 of the CAT Act was considered in *Shapkin v The University of Sydney* [2024] NSWCA 156 and *Hawkins v Wimbledon 1963 Pty Ltd* [2024] NSWSC 1465. In the latter case, the Court determined to

proceed with the judicial review notwithstanding the availability of an alternative statutory review avenue, citing the decision of the Court of Appeal in *Commissioner of Police New South Wales v* ***Gray*** (2009) 75 NSWLR 1; [2009] NSWCA 49.

19 It was held in *Gray* that there is no hard and fast rule that judicial review relief should be declined where adequate alternative statutory appeal processes are available. *Gray* involved the proper construction of s 29(3) of the *Security Industry Act 1997* (NSW). The Court permitted the judicial review challenge to proceed notwithstanding the availability of statutory appeal processes. McColl JA stated at [129] that the case raised "an important question of principle" on which there were inconsistent decisions, as well as raising the proper construction of legislation which had not previously been considered by the Court of Appeal. Those matters are not necessarily decisive, but they highlight the breadth of the discretion, which may involve a wide range of relevant considerations.

20 I consider the present case to be borderline. There is much to be said for the proposition that Mr Adams should first obtain leave before challenging the Appeal Panel's decision on a question of law. His case does, however, at least raise an issue of statutory construction regarding cl 1(d) in the Table in s 14 of the GIPA Act. It also appears that there is no existing Court authority on the question raised by Mr Adams as to whether a distinction needs to be drawn between an innocent informant and a wrongdoer or potential wrongdoer in construing and applying cl 1(d).

21 It is also in the interests of finality to permit the judicial review proceeding to progress, particularly having regard to the lengthy history of the matter (which has involved no less than four separate previous determinations regarding the access application) and in circumstances where the Commissioner did not raise the application of s 34(1)(c) until written submissions were filed only 2 weeks before the hearing. Thus, by that time, considerable time and resources had been devoted to having the matter ready for hearing before me.

22 For all these reasons, I decline to exercise the discretion under s 34(1)(c) or otherwise.

The Appeal Panel's reasons summarised

23 The Appeal Panel considered that Mr Adams raised nine grounds of appeal in challenging the Tribunal's decision. The Appeal Panel found that grounds 1–4 raised questions of law and thus could be appealed as of right, but that leave to appeal was required for grounds 5–9. (To avoid adding unduly to the length of these reasons, I will not separately summarise the Tribunal's reasons, noting that Mr Adams made clear to the Court that, despite the language of parts of the amended summons, his judicial review challenge was confined to the decision of the Appeal Panel.)

24 The Appeal Panel described the redactions in the COPS Report, all of which appeared on the first two pages. The first page was released to Mr Adams apart from details of the address of the location of the café, the name and associated information of the owner (which redacted information related to a pro forma item called "OWNER") and the name and a number alongside what was described in the pro forma report as "ORG OF INTEREST".

25 The Appeal Panel described the second page, noting that the same information was redacted as on the first page, along with some extra information about the name of the person redacted on the first page (comprising date of birth, address, mobile phone number and email address). This section of the second page also identified Mr Adams as the "PR", together with his mobile phone number. The unredacted section of the second page, with redacted parts identified (noting in particular the fourth paragraph which figured prominently in Mr Adams' challenge), was set out by the Appeal Panel at [8] (the redacted parts contain references such as "T3(a)" which appear to be shorthand references to particular clauses in the Table in s 14):

> **********
>
> At above time and date, police responded to the job in relation to PR locating a security camera inside the male bathroom at [there followed blanking out of

about a one third of the third line of this paragraph and the whole of the fourth line, in which there was specified “T3 (a), T 4 (d)”].

Upon arrival, police met the PR outside the above address. Police were then escorted to the male toilet at [blanking out of about one third of this line, in which there was specified “T4 (d)”] by the PR.

Police observed a security camera attached to the ceiling, which was pointed towards the hand wash.

Police questioned [there followed blanking out of about two thirds of the first line, all of the second, third, fourth and fifth lines and about one quarter of the sixth line, in which there was specified “T 1 (d), T 3 (a), T 4 (d)”]

Police informed [blanking out of about one third of this sixth line, in which there was specified “T 1 (d), T 3 (a)”] needs to take the camera down [there followed blanking out of about one half of the seventh line and all of the eighth line, in which there was specified “T 1 (d), T 3 (a)”]

Police also conducted a check on computer to make sure the camera was not working and found that it was not working.

Police informed [short blanking out in which there was specified T3 (a)] that there will be a record made in relation to this incident.

SC 13 apprised.

****

SC 16: CHESSHER/PAIJA

26 It brief, cl 1(d) identifies a public interest consideration against disclosure of information if disclosure could reasonably be expected to prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency’s functions. Clauses 3(a) and (b) identify additional public interest considerations against disclosure, namely where disclosure of the information could reasonably be expected to reveal an individual’s personal information or contravene an Information Protections Principle under the *Privacy and Personal Information Protection Act 1998* (NSW) or a Health Privacy Principle under the *Health Records and Information Privacy Act 2002* (NSW). Clause 4(d) identifies a further public interest consideration against disclosure where disclosure of information could reasonably be expected to prejudice any person’s legitimate business, professional or financial interests.

27 Focussing on grounds 2 and 3 of Mr Adams’ appeal to the Appeal Panel (which are pursued by Mr Adams before me) the Appeal Panel rejected Mr Adams’

argument that the Tribunal misconstrued cl 1(d). The Appeal Panel found no support for Mr Adams' preferred construction, which construction would mean that cl 1(d) (and possibly some other provisions in the Table to s 14) would not apply to information supplied to an agency by a wrongdoer or prospective wrongdoer. The Appeal Panel said at [48]:

> We see nothing in the text or objects of the GIPA Act, or in the case law authorities, which requires cl 1 (d), or cll 3 (a), 3 (b) or 4 (d) for that matter, to be read as excluding information supplied by an actual or suspected wrongdoer or excluding information about such a person. Mr Adams did not point to any specific basis in the legislative provisions or case law authorities that required such a construction. We reject this ground of appeal.

28 The Appeal Panel also explained why it rejected Mr Adams' ground 3 (which alleged that the Tribunal failed to consider whether the whole of the COPS Report should be released in circumstances where the redacted parts contained information concerning and/or provided by a wrongdoer or prospective wrongdoer, as opposed to information relating to a witness or confidential informer). The Appeal Panel found at [49] that these matters had been expressly considered by the Tribunal at [69] and [75] of *Adams (No 1)* in addressing Mr Adams' submission that confidentiality protections should not benefit such a person.

29 The Appeal Panel then added at [50]:

> Furthermore, it is obvious from both the unredacted and redacted versions of the COPS report that much of the information to which access was sought related to potential wrongdoing in respect of the camera and related to such individual(s) as might be responsible for such wrongdoing. Yet further, it is apparent from the Tribunal's reasons that it considered that disclosure of the redacted information sought by Mr Adams was not a pre-requisite to the achievement of accountability for wrongdoing (a matter we expand upon when dealing with Grounds 6 and 7 below).

30 The Appeal Panel explained why it rejected the other grounds raised by Mr Adams, including a complaint of procedural unfairness, the nature of which appears to be different from the complaint of procedural unfairness now raised in the judicial review challenge.

31 It is desirable to set out [94]–[99] of the Appeal Panel's reasons as they are relevant to one of Mr Adams' primary complaints, namely that the Appeal Panel failed to follow through on issues raised by Senior Member Durack SC in the course of the hearing regarding the redactions in the fourth paragraph on page 2 of the COPS Report:

> At the hearing of the appeal, following our review of the unredacted version of the COPS report, we raised with the respondent a question whether the Tribunal had, in truth, considered the material redacted in the fourth paragraph of the passages between the asterisked lines which contained the content of statements made by the person who spoke to the police which information went beyond the identification of personal details of the person.
>
> As to this, we pointed out the extent of the redacted material in this paragraph which did not emerge clearly from the Tribunal's outline of the redactions in the reasons for decision. We also made reference to the apparent emphasis the Tribunal had given in the reasons for decision upon the need to protect from disclosure personal information such as details of a person's name, address, telephone number and place and name of business.
>
> Mr Roberts, solicitor, who appeared for the respondent presented arguments to the effect that the Tribunal had addressed this different category of information. At the very least it had done so, implicitly.
>
> Having considered the redactions, the identification of the basis of the particular redactions in the fourth paragraph which made distinct reference to cl 1(d) of the Table in section 14 unlike the other redactions and the totality of the Tribunal's reasons, in particular, its reliance upon cl 1 (d), as distinct from the "personal information" grounds in cll 3 (a) and 3 (b), we are satisfied that the Tribunal did direct itself to this distinct category of information. We are also satisfied that the Tribunal gave proper and adequate consideration to the question whether this distinct category of information was covered by cl 1 (d) and to the weight to be given to the public interest against disclosure in respect of such category of information.
>
> As to this, we note, as well, the separate treatment by the Tribunal in respect of these two distinct categories of information when it came to carry out the s 13 balancing exercise: see at [98] and [99].
>
> Accordingly, we do not discern any appealable error by the Tribunal in respect of its consideration of all of the redacted information.

Consideration and disposition

32 As the Commissioner pointed out, Mr Adams appears to raise the following three primary claims in his amended summons and written submissions:

(1) The café owner should not have the benefit of the public interest consideration in cl 1(d) of the Table in s 14 in circumstances where he was not a bona fide police informant but rather an alleged or potential wrongdoer.

(2) The Appeal Panel should have remitted the matter for reconsideration by a single Tribunal member because of uncertainty about the status of the café owner as an informant and about the appropriateness of some redactions.

(3) Further information could (and should) have been disclosed to Mr Adams without revealing the identity of the café owner.

33 Mr Adams correctly acknowledged that, to succeed on a judicial review challenge, he needed to establish one or more jurisdictional errors or errors of law on the face of the record regarding the Appeal Panel's decision.

(a) Relevant parts of GIPA Act summarised

34 It is desirable to outline some relevant provisions in the GIPA Act.

35 The object of the Act is set out in s 3:

> **3 Object of Act**
>
> (1) In order to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective, the object of this Act is to open government information to the public by—
>
> (a) authorising and encouraging the proactive public release of government information by agencies, and
>
> (b) giving members of the public an enforceable right to access government information, and
>
> (c) providing that access to government information is restricted only when there is an overriding public interest against disclosure.
>
> (2) It is the intention of Parliament—

(a) that this Act be interpreted and applied so as to further the object of this Act, and

(b) that the discretions conferred by this Act be exercised, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, access to government information.

36 Section 5 provides that there is a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure.

37 Section 9(1) provides that a person who makes an application for government information has a legally enforceable right to be provided with access to the information in accordance with Pt 4 unless there is an overriding public interest against disclosure of the information.

38 Division 2 of Pt 2 contains various provisions relating to "public interest considerations". Section 12 provides:

12 Public interest considerations in favour of disclosure

(1) There is a general public interest in favour of the disclosure of government information.

(2) Nothing in this Act limits any other public interest considerations in favour of the disclosure of government information that may be taken into account for the purpose of determining whether there is an overriding public interest against disclosure of government information.

Note.

The following are examples of public interest considerations in favour of disclosure of information—

(a) Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.

(b) Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.

(c) Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.

(d) The information is personal information of the person to whom it is to be disclosed.

(e) Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.

(3) The Information Commissioner can issue guidelines about public interest considerations in favour of the disclosure of government information, for the assistance of agencies.

39 Section 13 sets out the "public interest test" in the following terms:

13 Public interest test

There is an ***overriding public interest against disclosure*** of government information for the purposes of this Act if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

40 Public interest considerations against disclosure are set out in s 14, which relevantly provides:

14 Public interest considerations against disclosure

(1) It is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1.

(2) The public interest considerations listed in the Table to this section are the only other considerations that may be taken into account under this Act as public interest considerations against disclosure for the purpose of determining whether there is an overriding public interest against disclosure of government information.

(3) The Information Commissioner can issue guidelines about public interest considerations against the disclosure of government information, for the assistance of agencies, but cannot add to the list of considerations in the Table to this section.

(4) The Information Commissioner must consult with the Privacy Commissioner before issuing any guideline about a privacy-related public interest consideration (being a public interest consideration referred to in clause 3 (a) or (b) of the Table to this section).

…

41 The Table in s 14 includes the following provision, which is at the heart of Mr Adams' case:

1 Responsible and effective government

> There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally)—
>
> …
>
> (d) prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions,
>
> …

42 It is important to note that the word "informant" does not appear in cl 1(d). That word does, however, appear later in the Table in cl 2(a). It is provided there, under the heading "Law enforcement and security", that there is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

> (a) reveal or tend to reveal the identity of an informant or prejudice the future supply of information from an informant,
>
> …

43 It is convenient at this point to describe some other clauses in the Table to which the Appeal Panel referred, being relevant to the redactions. Clause 3, which is headed "Individual rights, judicial processes and natural justice", provides that there is a public interest consideration against disclosure of information if disclosure of information could reasonably be expected to have one or more of the following effects:

> (a) reveal an individual's personal information,
>
> (b) contravene an information protection principle under the *Privacy and Personal Information Protection Act 1998* or a Health Privacy Principle under the *Health Records and Information Privacy Act 2002*,
>
> …

44 Clause 4 in the Table is headed "Business interests of agencies and other persons" and states that there is a public interest consideration against disclosure of information if disclosure of information could reasonably be expected to have one or more of the following effects:

…

(d) prejudice any person's legitimate business, commercial, professional or financial interests.

…

45 Section 15 identifies various principles to apply in making a determination as to whether there is an overriding public interest against disclosure of government information.

46 Section 55 is another important provision. It permits an agency to take into account specified personal factors concerning the access applicant in determining whether there is an overriding public interest against disclosure of information. It provides:

55 Consideration of personal factors of application

(1) In determining whether there is an overriding public interest against disclosure of information in response to an access application, an agency is entitled to take the following factors (the ***personal factors of the application***) into account as provided by this section—

(a) the applicant's identity and relationship with any other person,

(b) the applicant's motives for making the access application,

(c) any other factors particular to the applicant.

(2) The personal factors of the application can also be taken into account as factors in favour of providing the applicant with access to the information.

(3) The personal factors of the application can be taken into account as factors against providing access if (and only to the extent that) those factors are relevant to the agency's consideration of whether the disclosure of the information concerned could reasonably be expected to have any of the effects referred to in clauses 2–5 (but not clause 1, 6 or 7) of the Table to section 14.

(4) An applicant is entitled to provide any evidence or information concerning the personal factors of the application that the applicant considers to be relevant to the determination of whether there is an overriding public interest against disclosure of the information applied for.

(5) An agency may, as a precondition to providing access to information to an applicant, require the applicant to provide evidence concerning any personal factors of the application that were relevant to a decision by the agency that there was not an overriding public interest against disclosure of the information and, for that purpose, require the applicant to take reasonable steps to provide proof of his or her identity.

> (6) An agency is under no obligation to inquire into, or verify claims made by an access applicant or any other person about, the personal factors of the application but is entitled to have regard to evidence or information provided by the applicant or other person.
>
> **Note.**
>
> An agency is not entitled to impose any conditions on the use or disclosure of information when the agency provides access to the information in response to an access application. See section 73.

47 Access to government information in response to an access application may be provided in any of four ways, as specified in s 72(1) including, relevantly, by providing a copy of a record containing the information (s 72(1)(b)).

48 Section 74 provides for redactions to be made to a record to which access is to be granted:

> **74 Deletion of information from copy of record to be accessed**
>
> An agency can delete information from a copy of a record to which access is to be provided in response to an access application (so as to provide access only to the other information that the record contains) either because the deleted information is not relevant to the information applied for or because (if the deleted information was applied for) the agency has decided to refuse to provide access to that information.

(b) Mr Adams' three primary complaints

49 I shall now explain why I reject each of Mr Adams' three primary complaints.

(i) Is cl 1(d) disengaged when the relevant person is a wrongdoer or a potential wrongdoer?

50 The task of construing cl 1(d) turns on considerations of text, context and purpose. None of those matters supports Mr Adams' preferred construction. As noted above, there is no express reference in cl 1(d) to an "informant", let alone any distinction between an innocent informant and a person who provides information who is a wrongdoer or potential wrongdoer. Rather, the provision simply focuses upon the prejudice of the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions, irrespective of the source of that information. The source of the supply is not identified in the provision.

51 Furthermore, as a matter of context, the terms of cl 1(d) are to be contrasted with those in cl 2(a), where express reference is made to the public interest consideration against disclosure if disclosure of information would tend to reveal the identity of "an informant" or prejudice the further supply of information from "an informant".

52 For completeness, it may also be added that cl 2(a) itself draws no distinction between categories of informants and, in particular, whether a distinction is to be drawn between an innocent police informer as opposed to a wrongdoer or potential wrongdoer who provides information to any agency (not merely the police). These matters of context point strongly against Mr Adams' preferred construction.

53 Finally, I do not consider that the object or purpose of the GIPA Act requires the Court to accept Mr Adams' preferred construction. There is a clear statement of Parliamentary intention in s 3(2) that the GIPA Act be interpreted and applied so as to further the object set out in s 3(1). It is further provided that the discretions in the Act be exercised, as far as possible, so as to facilitate and encourage access to government information. I also note the statement in s 12(1) that there is a general public interest in favour of disclosure of government information. Provisions such as these have been described as "second generation object clauses". They are to be contrasted with freedom of information legislation in other jurisdictions, which contain what are sometimes described as "first generation object clauses" and which have generally been regarded as not favouring "a leaning position" towards disclosure (see generally *Attorney-General for State of South Australia v Seven Network (Operations) Ltd* (2019) 132 SASR 469; [2019] SASCFC 36 at [67]–[73] per Tate, Kyrou and Niall AJJ).

54 In my view, the object and purpose of the GIPA Act does not warrant a construction of cl 1(d) which would have words to the effect of "innocent informant" read into the provision, as urged by Mr Adams. The provision should be construed and applied in its own terms and not be modified in the manner suggested by Mr Adams.

55 As noted at [3] above, in his written submissions filed 5 September 2025, Mr Adams contends that the Appeal Panel applied cl 1(d) without first determining the "jurisdictional fact" that the redacted person was a "bona fide confidential informant acting in good faith, rather than the subject of the complaint/wrongdoer". This contention must be rejected for the following reasons. First, it misconceives the concept of jurisdictional fact. As the High Court explained in *Gedeon v Commissioner of the New South Wales Crime Commission* (2008) 236 CLR 120; [2008] HCA 43 at [43]–[44], the expression is generally used to identify "a criterion the satisfaction of which enlivens the exercise of the statutory power or discretion in question". Reference was then made to the following passage in the reasons of Latham CJ in *R v Connell; Ex parte Hetton Bellbird Collieries Ltd* (1944) 69 CLR 407 at 429–30:

> The subject matter with which the Industrial Authority deals is, inter alia, rates of remuneration. There is power to deal with this subject matter in respect of rates of remuneration which existed on the specified date only if the authority is satisfied that the rates in question are anomalous. Unless this condition is fulfilled, the authority cannot act — it is a condition of jurisdiction.

56 Secondly, and in any event, there is nothing in cl 1(d), properly construed, which indicates that it contains a jurisdictional fact which requires determination as to whether a person whose name has been redacted is an innocent informant as opposed to a wrongdoer or potential wrongdoer. Indeed, for all the reasons given above, properly construed, cl 1(d) does not require any determination directed to that alleged distinction. Thus, no "jurisdictional fact" arises as asserted by Mr Adams.

(ii) Failure to consider a mandatory consideration and need for remitter

57 Mr Adams seeks a remitter on the basis that, as explained in his outline of written submissions, the Appeal Panel failed to consider a mandatory consideration. In oral address, Mr Adams properly acknowledged that his written submissions erroneously referred to cl 5(1)(b) in support of this ground. Mr Adams then confirmed that this ground relates to some concerns which Senior Member Durack SC raised in the course of the Appeal Panel hearing in relation to the redactions in the fourth paragraph on page 2. Mr Adams'

complaint is that those concerns were not then ultimately upheld in the Appeal Panel's final decision.

58 Mr Adams drew specific attention to the following matters raised by the Senior Member in the hearing:

> SENIOR MEMBER DURACK SC (24:07 - 25:14): Then, in the paragraph beginning 'police questioned', you will see that the redaction extends beyond the potential identity. Part of it includes a reference to the person spoken to, but it does otherwise set out statements made by that person that if the person, or a possible disclosure of someone associated with the person is kept confidential. It's not clear to me at the moment why the material in the first and second sentences of that paragraph would be kept confidential, and they don't seem to have been dealt with in the Member's decision, so far as I can see.

59 Mr Adams submitted that, despite having raised those concerns (at various points of the hearing below), the Appeal Panel then did a complete "back-flip" and failed to follow through on the stated concerns.

60 There are several reasons why I reject this aspect of Mr Adams' case. First, the transcript passages which he relies upon are properly viewed as Senior Member Durack SC raising certain tentative "impressions" he had and then inviting the Commissioner's legal representative to respond. As I pointed out to Mr Adams, such exchanges are commonplace in adversarial hearings. Such "impressions" or concerns are not to be viewed as representing Senior Member Durack SC's final view, not the least because he was also sitting with another Senior Member. Furthermore, Senior Member Durack SC stated several times that he would need to read the Tribunal's reasons more carefully before coming to a firm conclusion regarding his tentative impressions.

61 Secondly, there is a grave danger in treating what is recorded in the transcript of a hearing as representing a finding which forms part of the decision-maker's reasons. The formal reasons themselves are determinative, not the transcript (apart from the transcript being potentially relevant to procedural errors, including both limbs of procedural unfairness (see generally *BDS17 v Minister for Immigration and Border Protection* [2018] FCA 1683 per Flick J and *COZ16*

v Minister for Immigration and Border Protection (2018) 259 FCR 1; [2018] FCA 46 per Griffiths J)).

62 Thirdly, I consider that the Appeal Panel proceeded to give a satisfactory explanation in its formal reasons as to why those earlier impressions lacked substance. That explanation is set out at [94]–[99] of the Appeal Panel's reasons (see at [31] above). These paragraphs squarely address the matters tentatively raised by Senior Member Durack SC. In my respectful view, these parts of the Appeal Panel's reasons adequately explain why the earlier impressions were found to lack foundation once the Appeal Panel had carefully considered both the relevant redactions and the Tribunal's reasons regarding the extent of the redactions in the fourth paragraph on page 2 of the COPS Report.

63 As the Commissioner's counsel pointed out before me, the adequacy of the Appeal Panel's reasons (as well as those of the Tribunal) has to take into account the constraints imposed by s 107 of the GIPA Act, which prohibits NCAT from disclosing any protected information in reasons or otherwise. Necessarily, the published reasons of both the Tribunal and Appeal Panel in this particular case must take account of this significant statutory constraint.

64 As noted above, Mr Adams also contended there was a need to clarify the status of the café owner as an informant and whether he was a wrongdoer or potential wrongdoer, being an issue which he says should have been remitted for reconsideration by a single member of the Tribunal. This contention is predicated on Mr Adams' preferred construction of cl 1(d). Accordingly, the rejection of that construction, for the reasons given above, necessarily means that this associated contention must also fail.

(iii) Disclosure of non-identifying information

65 In his amended summons, Mr Adams described his procedural fairness complaint as relating to the following matters (which overlap in many respects with his other judicial review grounds):

(a) The Appeal Panel did not properly consider his "core submission" that certain parts of the COPS Report were non-identifying in nature and could lawfully be disclosed without revealing the identity of any individual falling within cl 1(d).

(b) The Appeal Panel failed to engage with or make findings on the café owner's role, as reflected in the content of the COPS Report, which might properly be characterised not as an "informant" entitled to exemption, but rather as a participant or alleged wrongdoer whose identity could lawfully be disclosed.

(c) The Appeal Panel gave insufficient consideration to Mr Adams' arguments about the balancing of public interest factors favouring disclosure, including accountability of police action, his right to challenge the factual basis of the original report and the absence of demonstrable harm from partial disclosure of non-identifying information.

66 As to the first of those matters, the Appeal Panel did consider Mr Adams' submission that certain parts of the COPS Report could lawfully be disclosed if they were non-identifying in nature, as is reflected in [94]–[99] of its reasons.

67 As to the second matter, it is based on Mr Adams' preferred construction of cl 1(d), which I have rejected for reasons given above. Clause 1(d) does not turn on the identity and characterisation of a person as an "informant" and, in particular, whether the source of information is an innocent informant or a potential or actual wrongdoer.

68 As to the third matter, there is no substance in Mr Adams' complaint that the Appeal Panel inadequately considered his arguments regarding the balancing of competing public interests bearing upon the issue of disclosure. The Appeal Panel gave full and comprehensive reasons for rejecting Mr Adams' submissions regarding the balancing exercise. That matter was squarely addressed by the Appeal Panel in its reasons at [57]–[61] and [64]–[65]. The

Appeal Panel was also well aware of the need to balance competing considerations as required by s 13 of the GIPA Act, which it expressly referred to at [17]ff of its reasons.

(iv) An additional miscellaneous matter

69 For completeness, and noting that Mr Adams, as a litigant in person, adopted something of a scatter-gun approach in characterising what he claimed to be the Appeal Panel's multiple alleged errors, I will briefly address an additional matter.

70 In his written submissions (but not clearly in the amended summons), Mr Adams claimed it was irrational for information about the café to be redacted from the COPS Report because he already knew that information.

71 This complaint reveals a misunderstanding of a fundamental feature of the GIPA Act. That feature is that disclosure under that legislation is to be regarded, in effect, as disclosure to the world at large and not merely to the applicant. Thus, while it is true that particular "personal factors of the application" may be taken into account in determining the public interest test, as permitted by s 55 (but subject to the limitations specified therein), the GIPA Act does not assume that an access applicant will not themselves disclose the information to a wider audience. That possibility informs some of the clauses in the Table in s 14. The GIPA Act imposes no practical limits on what an access applicant can do with information which is disclosed under that legislation. This is reflected in s 15(e) of the GIPA Act which identifies the following principle to apply in making a public interest determination:

> (e) In the case of disclosure in response to an access application, it is relevant to consider that disclosure cannot be made subject to any conditions on the use or disclosure of information.

72 This is further reinforced in s 73, which provides:

> **73 Access to be unconditional**

> (1) An agency is not entitled to impose any conditions on the use or disclosure of information when the agency provides access to the information in response to an access application.
>
> (2) A condition may be imposed as to how a right of access may be exercised (such as a condition that prevents an applicant making notes from or taking a copy of a record that is made available for inspection) but only to avoid there being an overriding public interest against disclosure of the information.
>
> (3) A condition may be imposed that access to medical or psychiatric information will only be provided to a medical practitioner nominated by the applicant and not to the applicant personally.
>
> **Note.**
>
> Access can also be made conditional on the payment of processing charges (s 64) and on the provision of evidence of identity or other personal factors relevant to the agency's decision to provide access (s 55).

73 Thus, the fact that Mr Adams personally knew the location of the café does not mean it was illogical for the Appeal Panel to find that this information should be redacted having regard to cll 1(d), 3(a), 3(b) and 4(d).

(c) Should the Court review the unredacted COPS Report?

74 I have taken into account the parties' supplementary submissions on this issue. In his supplementary submissions filed 2 October 2025, Mr Adams urged the Court to inspect the unredacted COPS Report in deciding whether the Appeal Panel failed to deal with what he described as the "non-identity content issue under cl 1(d)".

75 Ms Langford provided helpful supplementary submissions which can be summarised as follows. First, there appears to be no previous judicial consideration of the question of whether information not disclosed to an access applicant because of an overriding public interest should be tendered or reviewed by a Court exercising judicial review jurisdiction.

76 Secondly, NCAT has more extensive powers regarding the disclosure of information in NCAT proceedings (see Pt 4, Div 6 of the CAT Act) than those conferred by the *Court Suppression and Non-publication Orders Act 2010* (NSW) (see generally *DRJ v Commissioner of Victims Rights* [2020] NSWCA 136 at [23]–[39] per Leeming JA).

77 Thirdly, the Commissioner reaffirmed that it was open to the Court to view the unredacted document to the extent that it was relevant to any jurisdictional error (or, presumably, error of law on the face of the record).

78 Fourthly, there is a distinction between a Court reviewing confidential material the subject of a claim of public interest immunity and the position here. That is because if a claim of public interest immunity is upheld after the document has been reviewed by the Court the document will not be admitted into evidence at all in any substantive proceeding (see *HT v The Queen* (2019) 269 CLR 403; [2018] HCA 40 at [29] and [33] per Kiefel CJ, Bell and Keane JJ).

79 If the Court inspected the document here, it would be for the purpose of determining whether the document is relevant to the resolution of any of the claimed reviewable errors. A second purpose would be to admit the document if it is determined to be relevant evidence. The Commissioner requested that, if the Court was to admit the document into evidence, appropriate confidentiality orders be made, as set out in Annexure A to the Commissioner's supplementary submissions dated 3 October 2025.

80 In determining whether the Court should inspect the unredacted copy of the COPS Report, it is important to acknowledge and maintain the well-established distinction between judicial review and review of the merits of a challenged decision. As noted above, Mr Adams correctly acknowledged that, to succeed on judicial review, he needed to establish one or more jurisdictional errors or errors of law on the face of the record. This necessarily places primary focus on whether or not the Appeal Panel's reasons disclose any such reviewable error as claimed in the amended summons.

81 For the reasons set out above, I am not persuaded that Mr Adams has established any of those alleged errors. Nor do I see any need in the particular circumstances of this case for the Court itself to review any of the redactions. I accept that different considerations could arise in another case, depending on the nature of the reviewable errors raised. But none of the asserted errors here require the Court to review the redactions themselves.

(d) Costs

82 For the following reasons, although Mr Adams' judicial review challenge has failed, I consider that each party should bear their own costs.

83 Although the Commissioner said in the written submissions dated 17 September 2025 that there was no reason to depart from the usual position regarding costs, in her closing oral address, Ms Langford properly acknowledged that the Court could view the challenge as one which was brought in the public interest, referring to the observations of the High Court in *Oshlack v Richmond River Council* (1998) 193 CLR 72; [1998] HCA 11. I accept that submission. Although it is true that at various stages of the earlier proceedings Mr Adams stated that he wanted the requested information so he could pursue civil proceedings against the owner of the café, Mr Adams informed the Court that he no longer intended to pursue any such action.

84 Secondly, I accept Mr Adams' statement that he brought the judicial review challenge in order to clarify, in the public interest, the nature and scope of various statutory provisions, particularly cl 1(d), in circumstances where there is apparently no case law regarding the issue of construction raised by him. Neither party was able to point to any previous authority addressing that issue of construction.

85 Accordingly, I accept that there is some novelty in this aspect of Mr Adams' judicial review challenge and that the public interest more widely will be served by the issue now having been addressed and determined by the Court. The same may be said concerning the question of whether the Court should inspect an unredacted copy of the COPS Report.

Conclusion

86 For all these reasons, the amended summons will be dismissed, with no order as to costs. The Commissioner has leave to contact my Associate to arrange the return of the sealed envelope.

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86
I certify that the preceding .... paragraphs are a true copy of the reasons for judgment herein of the Honourable Acting Justice Griffiths.

Date: 9/10/25

Associate: To Griffiths AJ